

*11/2* *2166*

# TRANSCRIPT OF RECORD

---

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

No. 283 *>*

---

THE MICHIGAN PUBLIC UTILITIES COMMISSION, RALPH  
DUFF, WILLIAM W. POTTER, ET AL., ETC., ET AL., AP-  
PELLANTS,

VS.  
RONALD W. DUKE, DOING BUSINESS AS DUKE CARTAGE  
COMPANY

---

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE EASTERN DISTRICT OF MICHIGAN

---

FILED FEBRUARY 11, 1982

(80,118)

*Red cross not apply*  
*to records because in*  
*case of bill.*

*747*  
*160*

(30,115)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 283

THE MICHIGAN PUBLIC UTILITIES COMMISSION, RALPH  
DUFF, WILLIAM W. POTTER, ET AL., ETC., ET AL., AP-  
PELLANTS,

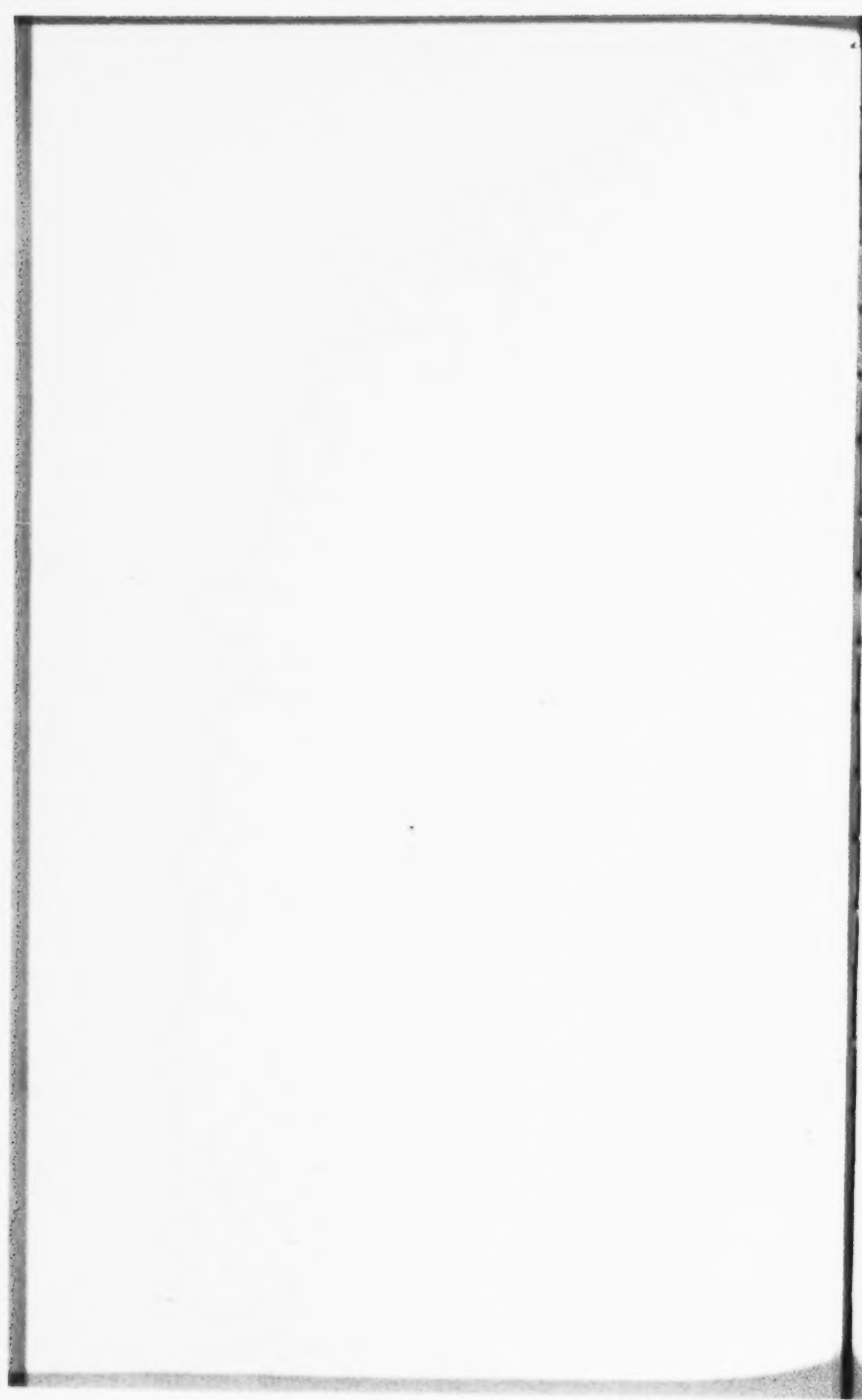
vs.

CORAL W. DUKE, DOING BUSINESS AS DUKE CARTAGE  
COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE EASTERN DISTRICT OF MICHIGAN

INDEX

	Original	Print
Record from the United States district court for the eastern district of Michigan.....	1	1
Bill of complaint.....	1	1
Exhibit 1—Notice to applicants for motor-vehicle per- mits .....	22	16
Affidavit of Coral W. Duke.....	25	19
Answer .....	26	20
Order allowing the Detroit, Monroe and Toledo Short Line Railway to Intervene.....	34	25
Answer of intervenor.....	36	26
Opinion in the case of Coral W. Duke vs. Michigan Public Utilities Commission et al.....	40	28
Opinion in the case of Liberty Highway Company et al. vs. Michigan Public Utilities Commission et al.....	43	29
Restraining order.....	55	36
Assignment of errors.....	57	37
Petition for and order allowing appeal.....	59	38
Citation and service..... (omitted in printing) ..	61	39
Stipulation re transcript of record.....	62	39
Clerk's certificate.....	63	40



[fol. 1]

IN THE

**DISTRICT COURT OF THE UNITED STATES FOR THE  
EASTERN DISTRICT OF MICHIGAN, SOUTHERN DI-  
VISION**

In Equity

CORAL W. DUKE, Doing Business as Duke Cartage Company,  
a Citizen of the State of Michigan, Plaintiff,

VS.

MICHIGAN PUBLIC UTILITIES COMMISSION, RALPH DUFF, WILLIAM W. Potter, Sherman T. Handy, Samuel O'Dell, and Samuel De Witt Pepper, Members of said Michigan Public Utilities Commission, and Andrew B. Dougherty, Attorney-General of the State of Michigan; Paul W. Voorhies, Prosecuting Attorney of Wayne County, Mich., and Clayton C. Golden, Prosecuting Attorney of Monroe County, Michigan; Roy L. Vandercreek, Commanding Officer of the Michigan State Police, and Otto R. Gearhart, a Member of the Michigan State Police, Defendants.

**BILL OF COMPLAINT**

To the Honorable Judges of the District Court of the United States for the Eastern District of Michigan, in Equity:

1. The Plaintiff, Coral W. Duke, doing business under the trade name of Duke Cartage Company, is a citizen and resident of the State of Michigan, and is engaged in interstate commerce transporting freight in interstate commerce between points in the State of Michigan and points in the State of Ohio and vice versa. The Plaintiff's principal place of business is at Detroit, Michigan, and operates his vehicles in part upon the highways of Michigan, as the same lie partly in the Counties of Wayne and Monroe, in said State.

[fol. 2] 2. That plaintiff engages in no intra-state business, its transactions in the State of Michigan in transporting freight being each and all of them part and parcel and inseparably connected with its business aforesaid, to-wit, the business of interstate commerce.

3. That the Defendant, Michigan Public Utilities Commission is a commission created under and by virtue of Act No. 419 of the Public Acts of the State of Michigan of 1919, which said Act was entitled—

“An Act to provide for the regulation and control of certain public utilities operated within this State; to create a Public Utilities Commission and to define the powers and duties thereof; to abolish the Michigan Railroad Commission and to confer the powers and duties

thereof on the commission hereby created; to provide for the transfer and completion of matters and proceedings now pending before said Railroad Commission; and to prescribe penalties for violations of the provisions hereof."

Reference to said act is hereby made.

4. That said Michigan Public Utilities Commission (hereinafter referred to as "Utilities Commission") superceded the Michigan Railroad Commission which was heretofore created by Act No. 300 of the Public Acts of Michigan of 1909, entitled—

"An Act to define and regulate common carriers and the receiving, transportation and delivery of persons and property, prevent the imposition of unreasonable rates, prevent unjust discrimination, insure adequate service, create the Michigan Railroad Commission, define the powers and duties thereof, and to prescribe penalties for violations hereof."

to which said Act reference is hereto had as fully as if the same were set forth herein at length.

5. That Defendants Ralph Duff, William W. Potter, Sherman T. Handy, Samuel O'Dell and Samuel DeWitt Pepper, are all the duly appointed, qualified and acting members of said Michigan Public [fol. 3] Utilities Commission.

6. That said Defendant Ralph Duff is a citizen of the State of Michigan and resides in Bad Axe, Eastern District of Michigan.

7. That Defendant William W. Potter is a citizen of the State of Michigan and resides in Hastings, Western District of Michigan.

8. That Defendant Sherman T. Handy is a citizen of the State of Michigan and resides in Lansing, Eastern District of Michigan.

9. That Defendant Samuel O'Dell is a citizen of the State of Michigan and resides in Shelby, Western District of Michigan.

10. That Defendant Samuel DeWitt Pepper is a citizen of the State of Michigan and resides in Port Huron, Eastern District of Michigan.

11. That Defendant Andrew B. Dougherty, is duly appointed, qualified and acting Attorney General of the State of Michigan, and is a citizen of the State of Michigan, and resides at Lansing, Eastern District of Michigan.

12. That Defendant, Paul W. Voorhies, is Prosecuting Attorney of Wayne County, Michigan, a citizen of the State of Michigan, and a resident of the City of Detroit, Eastern District of Michigan.

13. That Defendant, Clayton C. Golden, is Prosecuting Attorney of Monroe County, Michigan, a citizen of the State of Michigan, and a resident of the City of Monroe, Eastern District of Michigan.

14. That Defendant, Roy L. Vandercook, is a citizen of the State of Michigan, residing at Lansing, Eastern District of Michigan, and [fol. 4] is Commanding Officer of the Michigan State Police, which said Michigan State Police was created by Act No. 26 of the Public Acts of Michigan of 1919, to which reference is hereby made, the office powers and duties of such Police having heretofore been transferred to the State Department of Public Safety pursuant to Act No. 123 of the Public Acts of Michigan of the year 1921, to which reference is made. That under and by virtue of Section 5 of said Act No. 26 of the Public Acts of Michigan of 1919, it is provided:

"The several officers and members of the force shall have and exercise all the powers of deputy sheriffs in the execution of the criminal laws of the State and of all laws for the discovery and prevention of crime and shall have authority to make arrests without warrants for all violations of the law committed in their presence including laws designed for the protection of the public in the use of the highways of the State, and to serve and execute all criminal process. It shall be the duty of the State police force and all other officers and members thereof to co-operate with other State authorities and with local authorities in detecting crime, apprehending criminals, and preserving law and order throughout the State."

15. That Defendant, Otto R. Gearhart, is a citizen of the State of Michigan and resides at South Rockwood within the Eastern District of Michigan, and is a member of the aforesaid Michigan State Police, which said Michigan State Police constitutes a class so numerous as to make it impracticable to bring them all before the Court. That said Defendant is a representative of said class, and that the questions involved herein are of common and general interest to all of the persons constituting said class.

16. That this is a suit of civil nature in equity and arises under the Constitution and Laws of the United States.

[fol. 5] 17. That the matter in controversy herein exceeds, exclusive of interest and costs, the sum and value of \$3,000.00.

18. That plaintiff has been engaged in said business for upwards of six years and now has an investment in vehicles and equipment, land and buildings necessary to the operation thereof of \$200,000.00, and employs seventy five (75) men and operates forty seven (47) trucks and trailers, in the conduct of said business.

19. That plaintiff- sole and entire business consists in the carriage of freight as aforesaid in interstate commerce by virtue of three certain special contracts with three manufacturers of automobile bodies at Detroit, Michigan, and that he transports automobile bodies only and transacts no business for any one else or for the public, and does not hold himself out as transacting the business aforesaid of transportation of automobile bodies generally for the public.

20. That at the 52nd regular session of the Michigan State Legislature there was passed a certain Act known as Act No. 209 of the

Public Acts of Michigan of 1923, which said Act including the title thereof is as follows:

"An act to regulate and define common carriers of persons and property by motor vehicle on public highways of this State, prescribing the payment and fixing the amount of privilege taxes for such carriers, the disposition of such taxes and prescribing penalties for violation of this act.

The People of the State of Michigan enact:

Section 1. After thirty days from the effective date of this act, no person, firm or corporation shall engage or continue in the business of transporting persons or property, by motor vehicle for hire, upon or over the public highways of this State, over fixed routes or between fixed termini, or hold themselves out to the public as being engaged in such business, unless and until they shall have obtained from the Michigan Public Utilities Commission a permit so to do, which said permit shall be issued in accordance with the public convenience and necessity and shall not be assign- [fol. 6] able; Provided, That this act shall not apply to carriers operating exclusively within cities or villages.

Section 2. Said commission shall, by general order, prescribe such rules and regulations as shall, by it, be deemed appropriate, under this act. Said commission may withhold such permit in whole or in part, when it appears to the commission that the applicant is not or will not be able to furnish adequate, safe or convenient service to the public, but not without just cause.

Section 3. Any and all persons, firms or corporations, now engaged, or which shall hereafter engage, in the transportation of persons or property for hire by motor vehicle, upon or over the public highways of this State, or any of them, as above described, shall be common carriers, and, so far as applicable, all laws of this State now in force or hereafter enacted, regulating the transportation of persons or property by other common carriers, including regulation of rates, shall apply with equal force and effect to such common carriers of persons and property by motor vehicle upon or over the public highways of this State as above provided.

Section 4. Such permit, when granted, shall specify the route or routes over which the person, firm or corporation to whom the same may be granted shall have a right to operate, and may cover the whole or any part of the route or routes applied for. Any law or laws now in force or hereafter enacted, regulating the practice before said commission, or the method of reviewing its order, shall apply with equal force and effect to proceedings had or taken before said commission under this act.

Section 5. "Fixed routes, or between fixed termini," as used herein, or any permit hereunder, shall mean the route or termini over or between which said carrier shall usually or ordinarily operate such motor vehicle, though departures from such route or termini

may be periodical or irregular. Whether such motor vehicle is operated over fixed routes or between fixed termini, shall be a question of fact, and the commission's finding thereon shall be final.

Section 6. Said commission may, after notice given and hearing granted to any person, firm or corporation to whom a permit may have been granted, suspend or revoke the same for a violation of this act or of any lawful order, rule or regulation of said commission.

Section 7. Any and all common carriers under this act shall carry insurance for the protection of the persons and property carried by them in such amount as shall be ordered by said commission, and in insurers approved by the Commissioner of Insurance of this State, or shall furnish an indemnity bond running to the people of the State of Michigan, conditioned upon the payment of all just claims and liabilities resulting from injury to persons or property carried by such carrier, and in a company authorized to do business in this State, in an amount to be fixed and approved by said Commission.

[fol. 7] Section 8. Such permit shall entitle the carrier to whom it is issued to transport persons or property or both, over the route or routes and between the termini indicated on the face of such permit. Every such carrier shall pay to the commission for the use of the State, or at or prior to the issuance of the permit, and as a fee for the privilege of engaging in the business defined in section one hereof, for one year, a sum of money to be computed as follows: One dollar for each one hundred pounds weight of each motor vehicle employed by it in such business; and shall thereafter pay at a similar rate for each one hundred pounds weight of each motor vehicle added or acquired during any license year, which fees shall be in addition to any motor vehicle tax prescribed by the general motor vehicle law of the State. Each permit shall be good for a period of one year from its date, and at the expiration thereof may be renewed by the commission upon like terms and conditions from year to year thereafter. All fees received hereunder shall be paid into the State Treasury, and are hereby appropriated to the general highway fund of the State for highway purposes. Nothing in this section shall be construed to interfere with the right of any city or village to the reasonable control, by general regulation, (applicable to all motor vehicles), of its streets, alleys and public places, or to authorize a carrier to do a local business without the consent of the municipality in which such local business is wholly carried on.

Section 9. Any person, firm or corporation violating any of the provisions of this act, or any lawful order, rule or regulation of said commission, shall be liable to a fine not exceeding one hundred dollars, or imprisonment in the county jail not over ninety days, or both such fine and imprisonment in the discretion of the court; and if a corporation, its corporate officers, having the management of the business of such carrier, shall be personally subject to a fine not exceeding one hundred dollars or imprisonment in the county



jail not more than 90 days, or both such fine and imprisonment in the discretion of the court.

Section 10. Said commission may use any and all available legal and equitable remedies of a civil nature to enforce the provisions of this act, or any lawful order, rule or regulation made in pursuance hereof.

Section 11. Each section of this act shall be independently operative, and if any of said sections shall be declared invalid by any court of competent jurisdiction, it shall not affect or invalidate the remainder of this act.

This act is ordered to take immediate effect. Approved May 23, 1923."

21. That said Defendants, Michigan Public Utilities Commission and the aforesaid members thereof have threatened and as Plaintiff is informed and verily believes are about to attempt to enforce said [fol. 8] Act, and all of the provisions thereof, against Plaintiffs and their aforesaid motor trucks and trailers used in the aforesaid interstate transportation business of said Plaintiff, Duke Cartage Company, and are about to stop the vehicles of plaintiff on the highway from Detroit to Toledo by means of local officers and members of the aforesaid State Police stationed in, and near villages on the route aforesaid.

22. That under Section 41 of said Act 300 of the Public Acts of Michigan of 1909, the said Utilities Commission, together with the Attorney General of the State of Michigan and any Prosecuting Attorney selected by said Commission in any county where action is pending, is required to inquire into and to prosecute for any neglect or violation of the laws of the State of Michigan by any common carrier, subject to said act.

23. That, acting under and by authority of said Act 209, said Utilities Commission has promulgated a set of rules and instructions, a copy of which rules and regulations are hereto attached as Exhibit 1. That said Commission, by written instructions, is requiring all carriers seeking permits under said act to "Give a list of the steam railroads, electric railways and names and addresses of all other motor vehicles. This list should include all regular transportation lines operating between same points." That said instructions provide further "If the existing transportation companies do not give frequent service, or they make very indirect connections, or the present transportation facilities are not sufficient to care for the business, or if applicant has purchased interests of parties previously operating between same points, such facts or similar facts should be stated" as reasons. The foregoing appears as instructions for showing reasons why applications should be granted.

24. That Plaintiffs have been informed through the public press that said Utilities Commission has announced that the Michigan

State Police will be called upon to enforce the provisions of said Act 209 of the Public Acts of Michigan of 1923; and employees of Plaintiff have lately been warned by officers stationed in villages on the route of Plaintiff's vehicles, that they would forcibly stop and interrupt the progress of said vehicles through said municipalities on Sept. 29th 1923, because of any by virtue of orders received from the aforesaid Michigan Public Utilities Commission, and its officers and agents.

25. Said Plaintiffs verily believe from said announcements that it is the intention of said Commission, through said State Police, to arrest drivers of Plaintiffs' trucks and to stop the transportation of said freights aforesaid, unless Plaintiffs comply with all of the provisions of said Act 209.

26. That said Commission is at present attempting to enforce the provisions of said Act 209 against all common carriers of persons and property by motor vehicle (as defined by said act) and is holding hearing under said act, at which said hearings various railroad and electric railway interests are appearing in contest of applications by motor vehicle owners or license thereunder. That said interests are claiming the right to prevent the issuance of licenses, (as plaintiffs are informed and believe), on the ground that the railroads and electric railways are furnishing adequate and sufficient service, [fol. 10] thereby claiming that no public convenience or necessity for additional service exists under said act.

27. Plaintiffs allege that said Act 209 of the Public Acts of Michigan of 1923 is void, invalid and unconstitutional as to plaintiff for the following reasons:

(a) It places an undue, unwarranted and illegal burden and regulation upon the interstate commerce in which Plaintiff is engaged, contrary to the Constitution and laws of the United States.

(b) It is in conflict with the rights conferred upon Congress to regulate commerce among the several states as provided in Section 8, Clause (3) Article I of the Constitution of the United States. (The so-called Commerce Clause).

(c) It deprives Plaintiff of, and is in conflict with, their rights under said so-called Commerce Clause of the Constitution of the United States.

(d) It deprives Plaintiff of privileges and immunities contrary to Section 2, Article IV of the Constitution of the United States.

(e) It is an attempt to enforce a law of the State of Michigan abridging the privileges and immunities of the Plaintiff as a citizen of the United States, contrary to Amendment XIV to the Constitution of the United States.

(f) It denies to Plaintiff, the equal protection of the laws guaranteed by Amendment XIV to the Constitution of the United States

and Section 1 of Article IV of the 1908 Constitution of the State of Michigan.

(g) It is retrospective and a law impairing the obligation of contracts, contrary to Section 10 of Article I of the Constitution of [fol. 11] the United States and of Section 9 of Article II of the 1908 Constitution of the State of Michigan.

(h) It deprives Plaintiffs, and each of them, of their property without due process of law, contrary to Amendment XIV to the Constitution of the United States.

(i) As a law, it embraces more than one object and does not express such objects in its title, contrary to Section 21, Article V of the 1908 Constitution of the State of Michigan. The object of said act is not expressed in its title as required by Section 21 Article V of the 1908 Constitution of the State of Michigan.

(j) It attempts to revise, alter and amend other statutes of the State of Michigan by reference to their title only, (including statutes and laws hereafter to be enacted), contrary to Section 21 of Article V of the 1908 Constitution of the State of Michigan.

(k) It attempts to revise other acts and to alter and amend sections thereof without re-enacting and publishing such acts revised and sections altered and amended at length, as required by Section 21 of Article V of the 1908 Constitution of the State of Michigan.

(l) Not being an act immediately necessary for the preservation of the public peace, health or safety, it was given immediate effect, contrary to the provisions of Section 21 of Article V of the 1908 Constitution of the State of Michigan.

(m) It deprives Plaintiffs, and each of them, of their property without due process of law, contrary to Section 16 of Article II of the 1908 Constitution of the State of Michigan.

[fol. 12] (n) It is so indefinite, uncertain and imperfect, as to be incapable of enforcement.

(o) It confers upon an administrative commission legislative powers, contrary to Article V of the 1908 Constitution of the State of Michigan.

(p) It confers judicial power upon an administrative commission, contrary to Section 2, Article IV of the 1908 Constitution of the State of Michigan.

(q) It is arbitrary and discriminatory in its application to persons of the same class.

(r) It deprives Plaintiffs, and each of them, of their right to trial by jury, contrary to Amendment VII to the Constitution of the United States, and Section 13 of Article II of the 1908 Constitution of the State of Michigan.

(s) It is illegal class legislation.

(t) It imposes a specific tax which is not uniform upon the classes upon which said tax operates, contrary to Section 4, Article X of the 1908 Constitution of the State of Michigan.

(u) It permits, aids in and tends to the creation of monopolies, contrary to the laws of the State of Michigan and of the United States.

(v) It is contrary to the rights of the Plaintiffs, and each of them, arising from the expenditure of the so-called Federal Aid Money in the improvement of highways within the State of Michigan and particularly the highways over which plaintiffs operate.

(w) It is contrary to the rights of Plaintiffs, and each of them, to operate their motor vehicles over the highways of the State of Michigan, in their said business, pursuant to the so-called Motor [fol. 13] Vehicle Law of the State of Michigan.

(x) That it is grossly unreasonable, insofar as it attempts to include and designate as common carriers, any person who or any corporation which carries one article of freight only for one person or corporation only, under a special contract therefor.

28. In partial and further implication of divisions (a), (b) and (c) of paragraph 27 of our bill, Plaintiff alleges:

I. That said Act No. 209 imposes upon the interstate commerce and business of Plaintiff direct burdens, regulations and restrictions which the State of Michigan has no lawful right to impose and likewise unlawfully subjects the said business to the positive control, regulation and restriction of the said State and an administrative commission thereof.

II. That said Act No. 209 unlawfully gives said Utilities Commission the right entirely or partially to prevent Plaintiff from conducting their said interstate business whether Plaintiff pays said tax or not, and unlawfully confers upon said Commission the blanket and general right to prescribe any and all such rules and regulations governing Plaintiff's business as may be deemed appropriate by said Commission (including the right to determine what routes shall be used and the right to revoke any permit granted for violation of said Act or any lawful order, rule or regulation of said Commission); said Act further (by general, indefinite and uncertain reference) making all laws of the State of Michigan now in force or hereafter enacted regulating the transportation of persons or property by any other common carrier, including regulation of rates automatically applicable to Plaintiffs and their said business without regard to the effect said laws, rules or regulations have or will have on Plaintiffs under the Constitution and laws of the United States. That the result of the foregoing is that the constitutional right of Plaintiffs to engage in interstate commerce is unlawfully made dependent upon the action of said Commission and upon other unlawful, uncertain and unreasonable contingencies, and subject to unlawful, uncertain

and unreasonable control, regulation and restriction by the State of Michigan and the said Utilities Commission.

[fol. 14] III. Said Act unlawfully requires Plaintiff to carry insurance for the protection of persons and property carried by them in such amount as shall be ordered by said Commission and in insurers approved by the Commission of Insurance or to furnish an indemnity bond running to the People of the State of Michigan conditioned upon the payment of all just claims and liabilities resulting from injury to persons or property carried and in a company authorized to do business in Michigan in an amount to be fixed and approved by said Commission. That this specific provision imposes an unlawful, arbitrary, unwarranted and cumbersome and unnecessary burden upon Plaintiff's interstate business and is one which the State of Michigan has no right to impose thereon. That the imposition of such burden is contrary to the rights of Plaintiff under said Commerce Clause of the Constitution of the United States.

IV. Said Act unlawfully requires the payment of a certain tax or fee which is a direct tax upon the privilege of engaging in Plaintiff's interstate business and a direct burden and charge thereon, rendering such tax and fee void.

V. The provisions of said Act subjecting Plaintiff to criminal punishment for, and giving said Commission the right to use all available legal and equitable remedies of a civil nature to enforce compliance with, said Act and any lawful rule or regulation of said Commission, are likewise unlawful direct burdens and charges on the interstate business of said Plaintiffs.

VI. The provisions of said Act, making the determination of the Commission final as to whether a motor vehicle is operated over fixed routes or between fixed termini, is an unlawful and burdensome charge on Plaintiff's interstate business.

29. In partial and further amplification of divisions (d), (e) and (f) of said paragraph 27 hereof, Plaintiff alleges:

That plaintiff has the constitutional right to engage in their said business without compliance with said Act 209 and that said Act deprives them of their said constitutional rights and abridges their constitutional privileges and denies them the equal protection of the laws guaranteed by Amendment XIV to the Constitution of the United States and the Constitution of Michigan.

30. In partial and further amplification of division (g) of paragraph 27 hereof, Plaintiff alleges:

That said Act, if enforced, will operate to destroy the lawful business of Plaintiff, established and contracted for prior to the enactment of said Act, and to jeopardize and restrict their rights to engage in said business heretofore lawfully conducted. Said Act will impair the obligation of the contract between Plaintiff and of the contracts [fol. 15] and agreements between Plaintiff, Duke Cartage Company,

and the three certain manufacturers hereinbefore referred to and will cause Plaintiff unavoidably to break said contracts.

31. In partial and further amplification of divisions (h) and (m) of paragraph 27 hereof, Plaintiff alleges:

That said Act will destroy Plaintiff's business and will result in great depreciation in the value thereof, thereby preventing Plaintiff from enjoying the same. That the foregoing will be accomplished by virtue of the enforcement of said Act and will not be by due process of law.

The Plaintiff, Duke Cartage Company, alleges that under said law it will be compelled to pay in excess of \$5,000.00 per year for the so-called privilege tax; that such tax is unjust, unreasonable and confiscatory and the exaction of the same amounts to a taking of property of said plaintiff without due process of law, and deprives it of its rights, privileges and immunities, and denies it the equal protection of the law all contrary to the Constitution of the United States and of the State of Michigan. Plaintiff alleges that said tax is many times in excess of a proper privilege tax.

32. In partial and further amplification of division (i) of paragraph 27, Plaintiff alleges:

That said Act gives said Commission, among others, the following powers:

- a. To prescribe rules and regulations deemed appropriate by it.
- b. To grant or withhold in whole or in part, the license to operate.
- c. To exercise the same powers over common carriers of persons and property by motor vehicle as may be exercised by the Commission under other laws of the State of Michigan, including the regulation of rates.
- d. To make final determination of questions of fact, under Section 5 of said Act, and to determine as a result thereof, whether a given carrier comes within the provisions of said Act.
- e. To grant or withhold, suspend or revoke, any permit.
- f. To require, and pass upon the amount of, insurance or bonds, pursuant to paragraph 7 of said Act.
- g. To indicate routes.
- h. To enforce orders, rules and regulations by all available legal and equitable remedies of a civil nature.

That the conferring upon said Commission of these powers was such an object as was required by the Constitution of the State of Michigan to be expressed in the title of said Act, and not being so expressed renders said Act null and void.

That said Act had the conferring of said powers as an object, in

addition to the objects expressed in said Act, therefore said Act is void because embracing more than one object, contrary to the constitution of State of Michigan.

[fol. 16] That said act has among other things, the following specific objects: A—Regulation; B—Prohibition; and C—Taxation; which constitute such a plurality of objects as to violate Section 21, Article V of the Constitution of the State of Michigan. That the object of prohibition is not stated in the title of said act as required by said constitutional provision. That the tax required to be paid by the act is not a privilege tax as contemplated by the title and the exaction of the tax so provided is therefore an object not expressed in the title as required by said constitutional provision.

33. In partial and further amplification of divisions (j) and (k) of paragraph 27, Plaintiff alleges:

I. That outside of said Act 209 there is no power in the said Commission to take jurisdiction or control over common carriers of persons or property by motor vehicle and that the effect of said Act 209 is to revise, alter and amend other statutes of the State of Michigan, relating to common carriers and to said Utilities Commission, by reference to their general title only, and also to amend, in the same manner, any future law hereafter enacted regulating the transportation of persons or property by other common carriers, regardless of whether said future laws, when enacted, provide for regulation over Common carriers of persons or property by motor vehicle.

II. That the foregoing likewise amounts to an attempt to revise other acts and to alter and amend sections thereof, without re-enacting and publishing such acts revised and sections altered and amended at length, as required by the constitution of the State of Michigan.

III. That all of the foregoing renders said Act null and void.

34. In partial and further amplification of division (1) of paragraph 27 hereof, Plaintiff alleges:

That there did not exist the basis for the right of the Legislature to give said Act immediate effect.

35. In partial and further amplification of divisions (h), (m), (n) and (o) of paragraph 27 hereof, the Plaintiff alleges:

I. That said Act fails to provide any reasonable limits of or basis for the regulation and powers conferred upon said Commission, and that it is impossible for Plaintiffs, or any one else, to know or to ascertain what they are required to do under said Act. That there are numerous other common carriers of persons and property, concerning which various laws are now in force, or concerning [fol. 17] which various laws in the future undoubtedly will be enacted. That among such carriers are steam railroads, electric railways, boats and express companies. That there are many hundreds of regulations and laws in force regulating such carriers, respectively, and many different bases for, and limits on, their rights



and privileges and the control and regulation of said Utilities Commission thereof. That said Act fails to prescribe the rights of Plaintiffs, or their duty, under such laws. Said Act further fails to designate, with any reasonable certainty, which of said laws are applicable to Plaintiff.

II. That said Act unlawfully permits said Commission to determine what laws Plaintiff shall be subject to.

III. That said Act, being so uncertain and indefinite, virtually leaves it to said Commission to legislate in the premises, without any reasonable basis for, or control over, the action of said commission.

36. In partial and further amplification of divisions (p) and (r) of paragraph 27 hereof, Plaintiff alleges:

I. That said Act, under Section 5, makes the finding of the Commission final on the question of whether a carrier is operating over fixed routes or between fixed termini. The effect of this provision is to make the determination of the Commission final as to whether or not Plaintiff is subject to said Act.

II. That no right of review is given, and, therefore, Plaintiff is deprived of his constitutional right to a trial by jury in the premises.

37. In partial and further amplification of divisions (q), (s) and (t) of paragraph 27 hereof, the Plaintiff alleges:

1. That operating over the highways of the State of Michigan are many thousands of motor vehicles transporting persons and property for hire. That some of these vehicles operate wholly within the State of Michigan and others operate between points in the State of Michigan and other states. That many of said vehicles operate generally over the highways of the State without falling into the classification of those operating over fixed routes, or between fixed termini, as defined in the said Act. That a great number of owners of such vehicles engage in the general transportation of persons or property for conveyance to various places, without having fixed termini or operating over a fixed route, holding themselves out to convey to different sections of the State or to different points generally. That the classification of such vehicles made subject to said Act, discriminates against Plaintiff and others so similarly situated and against those required to comply therewith, but in favor of a far greater number of persons who should likewise be made subject to said Act, if said Act is to be enforced. That such other persons include those conducting a general business of transporting persons or property generally, but not over fixed routes or between fixed termini, those owning and operating motor vehicles in connection with other businesses, as, for example, manufacturers, creameries, bakeries, oil companies and the like, who daily use the highways of this state for the constant and regular transportation of their products and those furnishing taxi and jitney service generally, but not over fixed routes or between fixed termini. That said tax or



fee prescribed by said Act is not a fee for use of the highways, but, if it should be so construed, is, nevertheless, a specific tax which is not uniform upon the classes upon which it operates, nor is it imposed upon all of the persons who should properly and fairly be likewise taxed, thereby resulting in discrimination against those required to pay the same under said Act. That if there is any basis for said tax, it should be required to be paid by many of the other persons heretofore mentioned, and not being so required, renders such tax unjust, discriminatory and illegal.

38. In partial and further amplification of division (u) of paragraph 27 hereof, Plaintiff alleges:

The power given by said Act to withhold in whole or in part, the permit, or to grant same in accordance with public convenience and necessity, confers upon said Commission the right and duty to create and to permit monopolies in the business of transporting persons or property by motor vehicle. That said Act unlawfully gives said Commission broad powers to withhold said permit (even if the tax be paid) in whole or in part, or to revoke same after granted, in the event others are willing or able to furnish facilities for transportation, or in the event it is inconvenient to the public to grant or continue such permit. All of which is contrary to the settled, fixed and public policy and laws of the State of Michigan and to the statutes of the United States prohibiting monopolies and restraint of trade on interstate commerce.

39. In partial and further amplification of division (v) of paragraph 27 hereof, Plaintiff alleges:

I. That there has been expended on the so-called Dixie Highway, south of Flat Rock, a large sum of money (which Plaintiff is informed is \$125,000) furnished as Federal Aid for said highway, and on the so-called Dearborn-Flat Rock road \$284,000 of such money.

II. That said Plaintiff is operating over said Dixie Highway and as soon as said Flat Rock road is completed, intend to operate thereover.

[fol. 19] III. That the Federal government has aided the State of Michigan in the construction of various highways throughout the state to the extent of, as Plaintiff is informed, over \$1,000,000.

IV. That in accepting said Federal Aid, said State of Michigan is precluded from debar-ing citizens and residents of other states, or citizens of this state, and particularly the Plaintiff, from the use of such highway, for the carrying on of interstate commerce, and from requiring the Plaintiff to comply with said Act 209.

V. That said Dixie Highway and other highways over which Plaintiff is operating, are main trunk lines and of primary and interstate character, connecting with important interstate highways of other states. That said Federal Aid has been accepted by the State of Michigan under the Rural Post Roads Acts of July 11,

1916 and February 28, 1919 and the Federal Highway Act of November 9, 1921 (to which reference is made). That under said Acts the State of Michigan is estopped and prevented from enforcing said Act 209 against Plaintiff.

VI. That under said Federal Acts the State of Michigan is precluded from charging the fee prescribed by said Act 209.

VII. That the State of Michigan is further precluded by said Federal Acts from enforcing said Act 209 as a regulation.

40. In partial and further amplification of division (w) of paragraph 27 hereof, Plaintiff alleges:

1. That Plaintiff has complied with the provisions of the law of the State of Michigan relative to motor vehicles and the operation thereof and conspicuously display (on their said motor equipment) their state license motor vehicle numbers. That by reason of said Act 383 the State of Michigan is precluded from enforcing said Act 209 against Plaintiff and from requiring compliance therewith by Plaintiff as a condition to the right to use the highways of the State of Michigan in Plaintiff's said business.

41. That unless Plaintiff complies with the requirements of said Act 209, he will be prevented from engaging in his said interstate business and will be deprived from the benefits and income thereof. That the aforesaid rights of said Plaintiff exceeds in value the sum of \$3,000.00, exclusive of interest and costs, and that if said Plaintiff, Duke Cartage Company, is required to comply with the provisions of said Act, he will be compelled to expend and pay, for [fol. 20] the so-called privilege tax and insurance, in excess of \$3,000.00 exclusive of interest and costs.

42. That the enforcement of said Act will result in a great number of prosecutions and proceedings against the Plaintiff, and that only by this proceeding, and the relief therein prayed, can a multiplicity of suits, actions and proceedings, be avoided. That Plaintiff has no adequate remedy at law in the premises.

Wherefore the Plaintiff prays:

1. That said defendants, and each of them, be required to answer this Bill of Complaint (but not under oath, answer under oath being specifically waived).

2. That said defendants, upon the filing of this bill, and until final hearing, be restrained and enjoined, and after final hearing be permanently enjoined, from attempting to enforce said Act 209 of the Public Acts of Michigan of 1923 in any manner, and particularly against Plaintiff, and from attempting to enforce any penalties, rights and privileges conferred thereunder for non-compliance therewith, and from in any manner molesting or interfering with Plaintiffs, or their equipment used in their said business, or any person employed by them in the prosecution thereof.

3. That the said Act 209 of the Public Acts of Michigan of 1923 *he* declared null and void, illegal and unconstitutional.

4. That the writ of chancery summons or subpoena issue in accordance with the statute and rules and practices of this court.

5. That Plaintiff may have such further and other relief in the premises as equity and good conscience requires and as to the Court shall seem meet.

Duke Cartage Company, by C. W. Duke, Its Duly Authorized President, Plaintiff. Beaumont, Smith & Harris, Attorneys for Plaintiff. Business address: 1121-9 Ford Bldg., Detroit, Michigan.

[fol. 21] Jurat showing the foregoing was duly sworn to by Coral W. Duke omitted in printing.

---

[fol. 22] EXHIBIT 1 TO BILL OF COMPLAINT

## MICHIGAN PUBLIC UTILITIES COMMISSION

### Important Notice to Applicants for Motor Vehicles Permits

The Commission has adopted the following rule relating to insurance or indemnity bond to be provided by motor vehicle common carriers. It will be noted that such carriers must be prepared to file with the Commission the certificate of the insurance or bond called for in the rule within ten (10) days after the Commission issues its order authorizing the issuance of the permit. No permit will actually be issued until after the certificate of insurance or bond has been filed with the Commission. It is best, wherever possible, to file such certificate of insurance or bond at the time of making application, thus insuring prompt issuance of the permit.

### Insurance or Indemnity Bonds

Section 7 of Act No. 209 of the Public Acts of 1923 provides as follows: "Any and all common carriers under this act shall carry insurance for the protection of the persons and property carried by them in such amount as shall be ordered by said Commission, and in insurers approved by the Commission of Insurance of this State, or shall furnish an indemnity bond running to the people of the State of Michigan, conditioned upon the payment of all just claims and liabilities resulting from injury to persons or property carried by such carrier, and in a company authorized to do business in this State in an amount to be fixed and approved by said Commission."

The Commission construes Act No. 209 of the Public Acts of 1923 to place the same liabilities upon motor vehicle common carriers

as *it not* placed upon all other lawfully defined common carriers. Therefore, all common carriers, as defined in Act No. 209 of the Public Acts of 1923, shall take out and keep in force, in some company legally authorized to do a motor vehicle indemnity insurance or bonding business in this State, a policy, policies or bond running to the people of the State of Michigan in the following amounts:

#### Passenger Vehicle Liability and Property Damage Insurance or Indemnity Bond

(a) For each passenger vehicle used, the seating capacity of which is twelve (12) passengers or less:

##### (Insurance)

For any recovery for personal injury by one passenger, Five Thousand Dollars (\$5,000.00).

[fol. 23] For any recovery for personal injuries by all passengers in any one accident, not less than Ten Thousand Dollars (\$10,000.00).

For any recovery for damage to property of any passenger other than the assured, One Thousand Dollars (\$1,000.00).

##### (Indemnity Bond)

For any recovery for personal injury or damage to property of any and all passengers other than the assured, Eleven Thousand Dollars (\$11,000.00).

(b) For each passenger vehicle used, the seating capacity of which is thirteen (13) to twenty (20) passengers, inclusive:

##### (Insurance)

For any recovery for personal injury by one passenger, Five Thousand Dollars (\$5,000.00).

For any recovery for personal injuries by all passengers in any one accident, not less than Fifteen Thousand Dollars (\$15,000.00).

For any recovery for damage to property of any passenger other than the assured, One Thousand Dollars (\$1,000.00).

##### (Indemnity Bond)

For any recovery for personal injury or damage to property of any and all passengers other than the assured, Sixteen Thousand Dollars (\$16,000.00).

(c) For each passenger vehicle used, the seating capacity of which is twenty-one (21) to thirty (30) passengers, inclusive:

## (Insurance)

For any recovery for personal injury by one passenger, Five Thousand Dollars (\$5,000.00).

For any recovery for personal injuries by all passengers in any one accident, not less than Twenty Thousand Dollars (\$20,000.00).

For any recovery for damage to property of any passenger other than the assured, One Thousand Dollars (\$1,000.00).

## (Indemnity Bond)

For any recovery for personal injury or damage to property of any and all passengers other than the assured, Twenty-one Thousand Dollars (\$21,000.00).

(d) For each passenger vehicle used, the seating capacity of which is more than thirty (30) passengers:

[fol 24]

## (Insurance)

For any recovery for personal injury by one passenger, Five Thousand Dollars (\$5,000.00).

For any recovery for personal injuries by all passengers in any one accident, not less than Twenty-five Thousand Dollars (\$25,000.00).

For any recovery for damage to property of any passenger other than the assured, One Thousand Dollars (\$1,000.00).

## (Indemnity Bond)

For any recovery for personal injury or damage to property of any and all passenger- other than the assured, Twenty-six thousand dollars (\$26,000).

### Freight Vehicle Liability & Property Damage Insurance or Indemnity Bond

Each such common carrier, doing a freight business, shall take out and keep in force a liability and property damage insurance or indemnity bond in an amount or in such a manner so as to fully cover and protect the value of all property received by it for transportation insofar as said common carrier shall be liable under any and all laws applicable to said carrier.

Said insurance or bond shall be executed within ten (10) days from the date that carrier's permit of Public Convenience and Necessity is authorized. ✓

A certificate issued by the insurance or bonding company shall be immediately filed with the Commission after the execution of said documents, and the certificate shall show: ✓

The name of the person, firm or corporation and address of insured or bonded;

The name of insurance or bonding company;

That said documents cover the obligations imposed upon such person, firm or corporation by Act No. 209 of the Public Acts of 1923 and the regulations adopted by the Commission in matters of this kind;

That said insurance or bonding Company is approved by the Commissioner of Insurance of this State;

The factory number of each and every vehicle covered by said documents;

Date of execution and expiration of said documents;

Signature and official position of the person executing the certificate;

Date and place executed.

The insurance or bonding company shall notify the Commission ten (10) days before any policy, policies or bonds executed in behalf of common carriers defined in Act No. 209 of the Public acts of 1923 are to expire either by way of cancellation or limitation.

[fol. 25]

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF CORAL W. DUKE—Filed Sept. 29, 1923

Coral W. Duke, Plaintiff in the attached Bill of Complaint, being duly sworn, deposes and says that he owns and operates forty-seven automobile trucks of the make known as Reo, forty-seven specially designed trailers and various equipment connected therewith; that he has purchased land and erected a large and valuable garage thereon for the housing and care of said trucks, trailers and equipment; that he has invested in said property the sum of upwards of Two Hundred Thousand Dollars; that he has and owns contracts with automobile body manufacturers of Detroit, Michigan, giving him the exclusive right and privilege of transporting automobile bodies from the plants of the aforesaid manufacturers at Detroit, Michigan, to the plants of the Willys Overland Company at Toledo, Ohio; that deponent is bound under his contract to transport all of the body output of said factories intended for the Willys Company of Toledo, Ohio, and that said manufacturers depend entirely on deponent and on deponent's equipment for the transportation from Detroit, Michigan to Toledo, Ohio, and said manufacturers have no equipment with which to handle this work; that said contracts are of great value to deponent, to-wit: of the value of upwards of \$50,000; that deponent has been informed by an officer of the Michigan State Police stationed at Rockwood, Michigan, that the said Police would on September 29th, 1923, stop and present the vehicles of deponent from further progress on their route from Detroit, Michigan, to Toledo, Ohio, unless the drivers of said vehicles had paid the fees and exhibited the certificates required by Act No. 209 of the P. A. of the State of Michigan, Session of 1923; that to obtain said certificates deponent would be obliged to expend in cash

upwards of \$5,000.00; that deponent is threatened with the enforcement of other penalties mentioned in said Act No. 209 of 1923, of the State of Michigan; that the enforcement of said act will cause deponent irreparable injury and will cause the loss of valuable contracts, the ruination of his business and the loss of a substantial part of his capital investment, and

Further sayeth not.

(Sgd.) C. W. Duke.

Subscribed and sworn to before me, this 28th day of September, 1923. Charles H. McIntyre, Notary Public, Wayne County, Michigan. My commission expires Feb. 29, 1924.

[File endorsement omitted.]

---

[fol 26] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed Nov. 23, 1923

Now come the defendants and for answer to the bill of complaint filed herein, state as follows:

1. Answering paragraph 1 of plaintiff's bill of complaint, defendants aver that they are not in possession of sufficient information to either admit or deny the material allegations contained in said paragraph.

2. Answering paragraph 2 of plaintiff's bill of complaint, defendants aver that they are not possessed of sufficient information to either admit or deny the material allegations contained in said paragraph.

3. Defendants admit the material allegations contained in paragraph 3 of plaintiff's bill of complaint.

4. Defendants admit the material allegations contained in paragraph 4 of plaintiff's bill of complaint.

5. Defendants admit the material allegations contained in paragraph 5 of plaintiff's bill of complaint.

[fol. 27] 6. Defendants admit the material allegations contained in paragraph 6 of plaintiff's bill of complaint.

7. Defendants admit the material allegations contained in paragraph 7 of plaintiff's bill of complaint.

8. Defendants admit the material allegations contained in paragraph 8 of plaintiff's bill of complaint.

9. Defendants admit the material allegations contained in paragraph 9 of plaintiff's bill of complaint.

10. Defendants admit the material allegations contained in paragraph 10 of plaintiff's bill of complaint.

11. Defendants admit the material allegations contained in paragraph 11 of plaintiff's bill of complaint.

12. Defendants admit the material allegations contained in paragraph 12 of plaintiff's bill of complaint.

13. Defendants admit the material allegations contained in paragraph 13 of plaintiff's bill of complaint.

14. Defendants admit the material allegations contained in paragraph 14 of plaintiff's bill of complaint.

15. Defendants admit the material allegations contained in paragraph 15 of plaintiff's bill of complaint.

16. Defendants admit the material allegations contained in paragraph 16 of plaintiff's bill of complaint.

17. Defendants admit the material allegations contained in paragraph 17 of plaintiff's bill of complaint.

18. Answering paragraph 18 of plaintiff's bill of complaint, defendants aver they are not possessed of sufficient knowledge to either admit or deny the material allegations contained in said paragraph

[fol. 28] 19. Answering paragraph 19 of plaintiff's bill of complaint, defendants aver they are not possessed of sufficient knowledge to either admit or deny the material allegations contained in said paragraph and in this connection, defendants state that if said allegations contained in paragraph 19 of plaintiff's bill of complaint are true and plaintiff is engaged solely and exclusively as a private carrier by motor vehicle, then in that case defendants admit that plaintiff does not come within the regulations prescribed by Act No. 209 of the Public Acts of the State of Michigan for the year 1923 and that said Act does not apply in case of motor vehicles acting solely and exclusively as private carriers.

20. Defendants admit all the material allegations contained in paragraph 20 of plaintiff's bill of complaint.

21. Answering paragraph 21 of plaintiff's bill of complaint, the defendants, the Michigan Public Utilities Commission, deny that they have made any threats toward plaintiff or any other person, relative to the enforcement of said Act 209 of the Public Acts of the State of Michigan for the year 1923, but said commission admits that it is not only their intention but their sworn duty to enforce the provisions of said act and to do and perform all of the duties imposed upon said commission by virtue of said Act 209 of the Public Acts of the State of Michigan for the year 1923.

22. Defendants admit the material allegations contained in paragraph 22 of plaintiff's bill of complaint.



23. Defendants admit the material allegations contained in paragraph 23 of plaintiff's bill of complaint.

[fol. 29] 24. Answering paragraph 24 of plaintiff's bill of complaint, defendants aver that they are not in possession of sufficient information to either admit or deny the material allegations contained in said paragraph, but in this connection the commission states that they are using and expect to continue to use all of the necessary agencies of government, including the state police, to enforce the provisions of said act 209, wherever said act applies.

25. Answering paragraph 25 of plaintiff's bill of complaint, defendants state that it is their intention and their sworn duty to enforce the provisions of said act against every carrier who falls within the provisions of said act and to do and perform all of the duties imposed upon said commission by virtue of said Act No. 209 of the Public Acts of the State of Michigan for the year 1923.

26. Answering paragraph 26 of the plaintiff's bill of complaint, defendant members of the commission admit that the Michigan Public Utilities Commission did then and is now holding hearings upon applications relative to the issuing of permits to persons, firms or corporations engaged in the business of transporting persons or property by motor vehicle for hire, over the public highways of this state, in compliance with the provisions of said Act 209 of the Public Acts of the State of Michigan for the year 1923 and defendants admit that certain transportation interest other than those engaged in transporting by motor vehicle have appeared at such hearings in opposition to applications for license under said act 209 and in opposition thereto have taken the position that in some instances said applications for license should not be acted upon or [fol. 30] granted by said commission under said act, where said applications showed that said motor vehicles were to operate over said highways whereon public convenience and necessity for transportation is adequately served and provided for by transportation facilities now in existence and operation, other than motor vehicle facilities; that a majority of said commission has held that in determining the question whether a permit to operate, based upon a finding of public necessity and convenience, shall be granted, the commission takes into consideration the motor vehicle carriers operating over the proposed route and does not take into consideration the steam and electric transportation facilities serving the same territory and that this finding so made by the commission is now being reviewed on certiorari in the Supreme Court of the State of Michigan.

27. Defendants deny all of the material allegations contained in paragraph 27 of plaintiff's bill of complaint and the subdivisions (a) to (x) inclusive.

28. Defendants deny the material allegations contained in paragraph 28 of plaintiff's bill of complaint and in subdivisions I to VI, inclusive.

29. Defendants deny the material allegations contained in paragraph 29 of plaintiff's bill of complaint.

30. Defendants deny the material allegations contained in paragraph 30 of plaintiff's bill of complaint.

31. Defendants deny all the material allegations contained in paragraph 31 of plaintiff's bill of complaint.

32. Defendants admit that said Act 209 of the Public Acts of the State of Michigan for the year 1923 vests authority in the defendant commission to exercise the powers enumerated in paragraph 32 [fol. 31] of plaintiff's bill of complaint and subdivisions (a) to (h) inclusive, but denies all of the material allegations contained in the remaining subdivisions of paragraph 32 of plaintiff's bill of complaint and denies that said act is unconstitutional, null and void for any of the reasons enumerated in said paragraph 32 of plaintiff's bill of complaint.

33. Answering paragraph 33 of plaintiff's bill of complaint:

I. Defendants admit that they have no power to control common carriers of persons and property by motor vehicle except as provided in said Act 209, but deny that said Act 209 revises, alters or amends other statutes of the state of Michigan relative to common carriers by reference to their title only, or amends in the same manner, future laws hereafter enacted regulating the transportation of persons or property by other common carriers, as set forth in subdivision I of paragraph 33 of plaintiff's bill of complaint.

II. Defendants deny the material allegations contained in subdivision II of paragraph 33 of plaintiff's bill of complaint.

III. Defendants deny the material allegations contained in subdivision III of paragraph 33 of plaintiff's bill of complaint.

34. Defendants deny the material allegations contained in paragraph 34 of plaintiff's bill of complaint.

35. Answering paragraph 35 of plaintiff's bill of complaint:

I. Defendants deny the material allegations contained in subdivision I of paragraph 35 of plaintiff's bill of complaint.

[fol. 32] II. Defendants deny the material allegations contained in subdivision II of paragraph 35 of plaintiff's bill of complaint.

III. Defendants deny the material allegations contained in subdivision III of paragraph 35 of plaintiff's bill of complaint.

36. Defendants admit that the material allegations contained in subdivision I of paragraph 36 of plaintiff's bill of complaint and deny the material allegations of subdivision II of paragraph 36 of plaintiff's bill of complaint.

37. Defendants admit that there are a large number of commercial motor vehicles which do not come within the regulatory

provisions of said Act 209 of the Public Acts of the State of Michigan for the year 1923, but deny that classifying certain commercial motor vehicles as coming within said act, is discriminatory or class legislation and submit that the basis selected by the legislature is a reasonable basis of classification.

38. Defendants deny the material allegations contained in paragraph 38 of plaintiff's bill of complaint.

39. Defendants admit that a certain sum of money has been furnished in the nature of federal aid for highways, as set forth in subdivisions I, II and III of said paragraph 39 of plaintiff's bill of complaint, but defendants have no knowledge as to the exact amounts of money thus furnished by the federal government.

Defendants deny the material allegations contained in subdivision IV of paragraph 39 of plaintiff's bill of complaint.

Defendants admit that the said Dixie Highway and other highways set forth in plaintiff's bill of complaint are main trunk lines and admit that federal aid has been accepted upon said roads, but deny that under the Rural Post Roads Act of July 11th, 1916 and February 28th, 1919 and the Federal Highway Act of November 9th, 1921, the State of Michigan is stopped and prevented from [fol. 33] enforcing said Act 209 against any and all common carriers by motor vehicle who come within said act.

Defendants deny the material allegations contained in subdivision VI of paragraph 39 of plaintiff's bill of complaint.

Defendants deny the material allegations contained in subdivision VII of paragraph 39 of plaintiff's bill of complaint.

40. Defendants have not sufficient information to either admit or deny the material allegations contained in subdivision I of said paragraph 40 of plaintiff's bill of complaint.

41. Answering paragraph 31 of plaintiff's bill of complaint, defendants state that if plaintiff is a private motor vehicle carrier, as set forth in said bill of complaint, the provisions of said Act 209 will not apply to him and he will not be affected in any manner as set forth in said paragraph 1 of plaintiff's bill of complaint.

42. Answering paragraph 43 of plaintiff's bill of complaint, defendants state that if plaintiff is operating solely and exclusively as a private motor vehicle carrier as set forth in said bill of complaint, he does not fall within the provisions and conditions of said Act 209 of the Public Acts of the State of Michigan for the year 1923 and that the provisions of said act will not be enforced against him and will not result in any prosecution or proceedings against said plaintiff, as set forth in paragraph 42 of plaintiff's bill of complaint.

Wherefore, defendants state that if plaintiff is solely and exclusively a private carrier by motor vehicle, he is entitled to the relief prayed in paragraph 2 of his prayer for relief, but deny that he is entitled to the relief prayed for in paragraph 3 of the prayer

for relief, as set forth in plaintiff's bill of complaint, for any of the reasons set forth in plaintiff's bill of complaint.

[fol. 33½] Michigan Public Utilities Commission, by Peter Fagan, Secretary. Ralph Duff, William W. Potter, Sherman T. Handy, Samuel O'Dell, Samuel Dewitt Pepper, Andrew B. Dougherty, Paul W. Voorhies, Clayton C. Golden, Roy L. Vandercreek, Otto R. Gearhart. Andrew B. Dougherty, Attorney General of the State of Michigan, in Pro. Per.; O. L. Smith, Assistant Attorney General, Attorneys for Defendants. Business Address: Capitol, Lansing, Michigan.

[File endorsement omitted.]

[fol. 34] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING THE DETROIT, TOLEDO AND SHORT LINE RAILWAY  
TO INTERVENE—Filed Nov. 15, 1923

In the above entitled cause, on application of the Detroit, Monroe & Toledo Short Line Railway, a Michigan corporation, consented to by the parties to this cause by their respective attorneys, it appearing to the Court that said Detroit, Monroe and Toledo Short Line Railway operates an interurban electric railway line between the city of Detroit, Michigan and the City of Toledo, Ohio, parallel to and competed with by the motor vehicle service operated by plaintiff, and that it is interested in sustaining the constitutionality of Act No. 209 of the Public Acts of Michigan of 1923 as applied to the plaintiff and to other carriers operating under special contract, and not [fol. 35] holding themselves out to carry for the public generally,

It is ordered that said Detroit, Monroe and Toledo Short Line Railway be and it hereby is permitted to intervene as a defendant in said cause and to file therein the answer of which a copy is hereto attached.

Charles C. Simons, District Judge.

Dated 15th day of November, 1923.

[File endorsement omitted.]

[Title omitted]

## ANSWER OF INTERVENOR—Filed Nov. 15, 1923

This defendant, for answer to the bill of complaint, says:

1. Answering paragraphs 1 and 2 of the bill defendant says that it is without sufficient information to either admit or deny the allegations thereof, and therefore leaves plaintiff to its proof.

2. Answering paragraphs 3 to 15, both inclusive, of the bill, the allegations thereof are admitted.

3. Answering paragraph 16 of the bill, the allegations thereof are matters of law and are neither admitted nor denied.

4. Answering paragraph 17, the allegations thereof are admitted.

[fol. 37] 5. Answering paragraphs 18 and 19, this defendant has no knowledge or information as to the allegations therein contained, neither admits nor denies them, but leaves plaintiff to its proof.

6. Paragraph 20 of the bill is admitted.

7. As to paragraph 21 of the bill, this defendant has no knowledge or information, neither admits nor denies the allegations of said paragraph, and leaves plaintiff to its proof.

8. The allegations in paragraph 22 of the bill are matters of law, and are neither admitted nor denied.

9. As to the allegations in paragraphs 23, 24 and 25 of the bill, this defendant has no knowledge or information, neither admits nor denies them, and leaves plaintiff to its proof.

10. As to the allegations in paragraph 26, this defendant admits that at certain of the hearings held by the Commission under Act 209, certain railroad and electric railway transportation interests, including this defendant, appeared in contest of applications for permits by motor vehicle owners, upon the ground that existing transportation facilities in the cases of the applications opposed were furnishing adequate and sufficient service, and that there was no public convenience or necessity for any additional transportation facilities.

11. As to the allegations of invalidity and unconstitutionality of Act 209 of the Public Acts of 1923 set forth in paragraph 27 of the bill, this defendant denies that said Act is invalid and unconstitutional, and denies the allegations made in each of the sub-sections of said paragraph.

12. It denies the allegations of paragraphs 28 to 39, both inclusive, of the bill, as to the unconstitutionality and invalidity of said [fol. 38] Act, and denies the allegations of each of the sub-sections of said paragraphs.

In this connection, and with reference particularly to sub-sections (g) and (w) of paragraph 27, and to paragraph 40, which is an amplifying statement of sub-section (w) of paragraph 27, this defendant avers that the purpose of said Act No. 209 of the Public Acts of 1923 is to regulate and control the use of public highways of the State of Michigan in the transportation of persons and property for hire by all motor vehicles that run over fixed routes or between fixed termini, including those who, like the plaintiff (according to the averments in paragraph 19 of the bill) are carrying under special contract only, and do not hold themselves out to carry for the public generally; and avers further that said Act as applied to said class of carriers is valid and constitutional.

This defendant further avers with reference to the averment in paragraph 40 of said bill, that the plaintiff has complied with the provisions of Act No. 383 of the Public Acts of the State of Michigan of 1919.

(a) That it does not appear by the bill of complaint when the tax provided for by said Act was paid by the plaintiff, or whether said tax was paid before or after May 10, 1923;

(b) That by Act No. 128 of the Public Acts of the State of Michigan of 1923 (p. 188), which took effect May 10, 1923, Section 7 of the general act for the registration of motor vehicles, which is the Act providing for the payment of the tax claimed to have been paid by the plaintiff, was so amended as to read as follows:

"The Secretary of State shall collect the following taxes before registering a motor vehicle or vehicles in accordance with the provisions of this Act, which taxes shall be all the lawful tax collectible on such motor vehicle and shall exempt such motor vehicle from all other forms of taxation *except that the legislature may impose further and different specific taxes or privilege fees on certain classes of such motor vehicles.*"

The words underscored being the words added by amendment of said Act No. 128.

(c) That said Act No. 209 of the Public Acts of 1923, the constitutionality of which is attacked in this case, took effect on May 23, 1923, and that the taxes or fees imposed thereby are of the class and character contemplated in the amendment made to said motor vehicle registration Act by said Act No. 128 of the Public Acts of 1923.

This defendant prays that the bill of complaint be dismissed.  
 Detroit, Monroe & Toledo Short Line Railway, by Stevenson,  
 Carpenter, Butyl & Backus, Its Attorneys.

[File endorsement omitted.]

[Title omitted]

OPINION—Filed December 11, 1923

In equity. Suit by Coral W. Duke, citizen of Michigan, against the Michigan Public Utilities Commission and others to enjoin enforcement by the Defendants of an act of the Michigan State Legislature.

✓ Plaintiff claims to be engaged in transporting freight by means of motor trucks between fixed points in Ohio and fixed points in Michigan, operating upon the highways of Michigan over fixed routes; that he is engaged solely in interstate business and that he does no intrastate business; that his sole and entire business consists in carrying freight by virtue of three special contracts with three manufacturers of automobile bodies at Detroit, Michigan; that he transacts no business for anyone else, or for the public, and does not hold himself out as transacting a business of transporting automobile bodies generally for the public; that the defendants are the Michigan [fol. 41] Public Utilities Commission, and certain State and County officers who threaten to enforce as to him Act 209 of the Public Acts of the State of Michigan of 1923, which act plaintiff claims to be void, invalid and unconstitutional as to him, in that it contravenes provisions of both the State and Federal Constitutions. The title of the act in question is set up in full in the opinion this day rendered in the case of Liberty Highway Company vs. Michigan Public Utilities Commission, and the terms of the act are therein sufficiently indicated.

Beaumont, Smith & Harris, Detroit, for Plaintiffs. George E. Brand, Detroit, Amicus Curiae for Plaintiff. Andrew B. Dougherty, Attorney General, and O. L. Smith, Assistant Attorney General, for Defendants. W. L. Carpenter and H. E. Spaulding, Detroit, for Detroit, Monroe & Toledo Short Line Railway, Intervening Defendants.

Before Donahue, Circuit Judge, Tuttle and Simons, District Judges,  
Under Section 266 of the Judicial Code

Per CURIAM: The several constitutional objections raised by the Plaintiff, in so far as they are similar to those raised on behalf of plaintiffs in the case of Liberty Highway Company vs. Michigan Public Utilities Commission, are sufficiently discussed in the opinion filed this day in the said cause. The plaintiff herein is a private carrier, and we have already held in the Liberty Highway case that any provisions of Act 209 of the Public Acts of Michigan of 1923 which are so broad in their terms as to be applicable also to private carriers, are foreign to the title of the act and fall under the condemnation of the Michigan constitutional requirements in the said opinion referred to. They are, however, independent of and separable from those that apply to common carriers, and their invalidity does

not affect the remainder of the act. Klatt vs. Probate Judge, 159 [fol. 42] Mich. 203; Chambers vs. Grand Lodge, 162 Mich. 344; Attorney General vs. Hillyer, 221 Mich. 537; City of Lansing vs. Board of State Auditors, 111 Mich. 327.

It follows from what we have said in the Liberty Highway case that Act 209 of the Public Acts of Michigan of 1923 is valid except as to Sections 3 and 7 thereof, and that with the elimination of Section 3 there is nothing in the — that makes it applicable to private carriers.

✓ The injunction prayed for by the Plaintiff will be granted, and it is left to the District Judges to settle the terms of the order.

Maurice H. Donahue, Arthur J. Tuttle, Charles C. Simons.

[File endorsement omitted.]

[fol. 43]

IN UNITED STATES DISTRICT COURT

No. 593

LIBERTY HIGHWAY COMPANY, an Ohio Corporation, and EDWARD CHARLES KABEL, Citizen of the State of Ohio, Plaintiffs,

VS.

MICHIGAN PUBLIC UTILITIES COMMISSION et al., Defendants

OPINION—Filed December 11, 1923

In Equity. Suit by Liberty Highway Company, an Ohio corporation, and Edward Kabel, a citizen of Ohio, against the Michigan Public Utilities Commission, the five members of the Commission as individuals, Andrew B. Dougherty, Attorney General of the State of Michigan, the Prosecuting Attorneys of Wayne, Ingham, Oakland and Monroe Counties, Michigan, and the Commander and one of the members of the Michigan State Police, to enjoin the enforcement by the defendants of an act of the Michigan State Legislature.

The Plaintiff, Liberty Highway Company, is an Ohio corporation engaged in transporting freight by means of motor trucks between fixed points in Ohio and fixed points in Michigan, operation upon the highways of Michigan over fixed routes. It claims to be engaged solely in interstate business and to do no intrastate business; to have developed a large and profitable business with an investment in excess of Seventy Thousand Dollars; that it employs many trucks and trailers, and that in its business it sub-contracts with others for [fol. 44] the employment of motor trucks, some of which are owned in Ohio by citizens thereof, and that the co-plaintiff, Charles Kabel, is one of its sub-contractors. The Michigan Public Utilities Commission, defendant, is a Commission created by statute of Michigan as a successor to the Michigan Railroad Commission, and is empowered by law to regulate and control certain public utilities



operated within the State. The other defendants are County and State officers whose duty it is to enforce the laws of Michigan, and by virtue of their offices threaten to enforce the provisions of Act 209 of the Public Acts of Michigan of 1923, approved May 23d, 1923, and entitled as follows: "An Act to regulate and define common carriers of persons and property by motor vehicle on public highways of this State, prescribing the payment and fixing the amount of privilege taxes for such carriers, the disposition of such taxes, and prescribing penalties for violation of this Act." The object of this action is to enjoin the enforcement of this act as against the plaintiffs on the ground that it contravenes provisions of the Federal and State Constitutions. The Act provides that no person, firm or corporation shall engage or continue in the business of transporting persons or property by motor vehicle for hire over the public highways of the State over fixed routes, or between fixed termini, unless they shall have obtained a permit from the Michigan Public Utilities Commission, which shall be issued in accordance with public convenience and necessity. It provides that the Commission shall prescribe appropriate rules and regulations; that it may withhold such permit in whole or in part; that all persons or corporations engaged in the business described in the Act shall be common carriers; that all laws of the State regulating transportation by other common carriers, including regulation of rates, shall apply to common carriers [fol. 45] by motor vehicle; that the permit to be granted shall specify routes; that whether motor vehicles operate over fixed routes, or between fixed termini, shall be a question of fact upon which the Commission's finding shall be final; that permits may be granted, suspended or revoked for violation of the act, or the rules or regulations of the Commission; that all common carriers under the act shall carry insurance for the protection of persons and property carried by them, and shall furnish an indemnity bond conditioned upon payment of just claims and liabilities; that every carrier shall pay to the Commission for the use of the State, as a privilege fee, One Dollar for each one hundred pounds of weight of each motor vehicle, which fees shall be in addition to motor vehicle tax prescribed by general law; that permits shall be good for one year, and shall be renewed upon like terms from year to year; that all fees shall be paid into the State Treasury, and are appropriated to the general highway fund for highway purposes; that violations of the act shall be punishable by fine or imprisonment or both; that the Commission may use any and all available legal and equitable remedies of a civil nature to enforce the provisions of the act, or its rules and regulations made in pursuance thereof; that each section of the act shall be independently operative, and that the unconstitutionality of any section shall not invalidate the remainder of the act, and the act is given immediate effect. Act 209 contains eleven sections, of which Sections 3 and 7 are set forth in full in the margin. The Defendants answer jointly and move for a dismissal of the Bill of Complaint.

(Section 32. Any and all persons, firms or corporations now engaged, or which shall hereafter engage, in the transportation of persons or property for hire by motor vehicles, upon or over the public highways of this State, or any of them, as above described, shall be common carriers, and so far as applicable all laws of this [fol. 46] State now in force or hereafter enacted, regulating the transportation of persons or property by other common carriers, including regulation of rates, shall apply with equal force and effect to such common carriers of persons and property by motor vehicle upon or over the public highways of this state as above provided.)

(Section 7. Any and all common carriers under this act shall carry insurance for the protection of the persons and property carried by them in such amount as shall be ordered by said commission, and in insurers approved by the commissioner of insurance of this state, or shall furnish an indemnity bond running to the people of the state of Michigan conditioned upon the payment of all just claims and liabilities resulting from injury to persons or property carried by such carrier, and in a company authorized to do business in this state, in an amount to be fixed and approved by said commission.)

George E. Brand, Detroit, for plaintiffs, Andrew B. Dougherty, Attorney General, O. L. Smith, Assistant Attorney General, Lansing; W. L. Carpenter and H. E. Spaulding, Amici Curiae, for Defendants.

Before Donahue, Circuit Judge, and Tuttle and Simons, District Judges, under Section 266 of the Judicial Code.

Per CURIAM: Plaintiffs seek to have performance of Act 209 of the Public Acts of Michigan of 1923 enjoined upon the ground of its alleged unconstitutionality, both under the Michigan and the Federal Constitutions. They contend, (1)—That it violates Section 21 of Article 5 of the Constitution of Michigan in that its real object is not expressed in the title, and in that it contains a plurality of objects. (2)—That it violates the Interstate Commerce clause of the Federal Constitution in that it unlawfully regulates and burdens interstate commerce. (3)—That the Federal Highway Act precludes the enactment of a tax for the use of roads built partly with Federal aid. (4)—That the Act is discriminatory class legislation. (5)—That it is void for uncertainty and indefiniteness.

1. Act 209 of Public Acts of Michigan of 1923 has as its general object the establishment of a scheme for licensing and for the accompanying regulation of common carriers by motor vehicle on [fol. 47] and in connection with the public highways of the State. The license fee in question is prescribed for the privilege of using such highways, and is a part of such regulatory scheme. All of the provisions of the Act applying to common carriers are germane,

auxiliary or incidental to the general purpose. The statute has only one object, which is sufficiently indicated in its title, and it is therefore not defective in this respect within Section 21, of Article 5 of the Michigan Constitution, which provides, "No law shall embrace more than one object, which shall be expressed in its title". *Jasnowski vs. Board of Assessors*, 191 Mich. 287; *Loomis vs. Rogers*, 197 Mich. 265; *Attorney General vs. Hillyer*, 221 Mich. 537.

The principal objection urged to the title of the act is that it purports to regulate and define common carriers generally, whereas the provisions of the act are restricted to a class of common carriers. This is not a fatal defect in the title. Where the title of the act is broader than the act itself, it has not usually been regarded as a fatal defect unless the title failed to give notice of what the act contained. *Jasnowski vs. Judge Recorder's Court*, 192 Mich. 139, and cases therein cited.

As, however, the title to this act has reference only to common carriers, any provisions thereof so broad in their terms as to be applicable also to private carriers, are foreign to such title and fall under the condemnation of the Michigan constitutional requirements herein referred to. Such provisions are the provisions of Section 3. They are, however, independent of and separable from those that apply to common carriers, and their invalidity does not affect the remainder of the act. *Klatt vs. Probate Judge*, 159 Mich. 203; *Chambers vs. Grand Lodge*, 162 Mich. 344; *Attorney General vs. Hillyer*, (Supra); *City of Lansing vs. Board of State Auditors*, 111 Mich. 327.

2. It is not within the power of the State even under the guise [fol. 48] of an exercise of its police power, to require a license for the privilege of engaging in or otherwise interfering with interstate commerce as such, for that would be to regulate such commerce, to the power to do which has been surrendered by the State to Congress. *Wabash, St. Louis & Pacific Railway Company vs. Illinois*, 118 U. S. 557; *Robbins vs. Taxing District*, 120 U. S. 489; *Bowman vs. Chicago & Northwestern Railway Company*, 125 U. S. 465; *Harmon vs. Chicago*, 147 U. S. 396; *Brennan vs. Titusville*, 153 U. S. 289; *Barrett vs. New York*, 232 U. S. 14; *Sault Ste. Marie vs. International Transit Company*, 234 U. S. 333; *Askren vs. Continental Oil Company*, 252 U. S. 444; *Lemke vs. Farmers' Grain Company*, 258 U. S. 50.

The commerce clause of the Federal constitution does not, however, deprive the States of the right to reasonably regulate under their police power the use of their public highways, and to that end to require a license and impose a reasonable charge therefor, for the privilege of such use even if thereby interstate commerce is incidentally affected, provided that such regulation, license and charge bear a reasonable relation to the safe and proper maintenance and protection of such highways, do not obstruct or burden interstate commerce, and are not in conflict with Federal legislation on the same subject enacted within constitutional limitations.

Escanaba & Lake Michigan Transportation Company vs. Chicago, 107 U. S. 678; St. Louis vs. Western Union Telegraph Co., 148 U. S. 92; Minnesota Rate Cases (Simpson vs. Shepard), 250 U. S. 352; Hendrick vs. Maryland, 235 U. S. 610; Kane vs. New Jersey, 242 U. S. 160; McKay Telegraph & Cable Co., vs. Little Rock, 250 U. S. 94; Interstate Motor Transit Company vs. Kuykendall, 284 Fed. 882; Stage Company vs. Kozar, 104 Ore. 600; 209 Pac. 95; Northern Pacific Railway Company vs. Schoenfeldt 213 Pac. 26 (Wash).

The case of Interstate Motor Transit Company vs. Kuykendall, [fol. 49] Supra, involved a statute similar in nearly all essential respects to Act 209. The plaintiff was engaged in interstate commerce between Seattle and San Francisco, and did no intrastate commerce business. This case was heard by a special court convened under Section 266 of the Judicial Code, and the statute was held valid as against the same constitutional objections as are here urged. The Kuykendall case follows and is largely ruled by the decisions of the Supreme Court in Kendrick vs. Maryland, Supra, and Kane vs. New Jersey, Supra.

In the Kendrick case Mr. Justice McReynolds said:

"The movement of motor vehicles over the highways is attended by constant and serious dangers to the public, and is also abnormally destructive of the ways themselves. Their success depends on good roads, the construction and maintenance of which are exceedingly expensive. \* \* \* In the absence of national legislation covering the subject a state may rightfully prescribe uniform regulations necessary for public safety and order in respect to the operation upon its highways of all motor vehicles—those moving in interstate commerce as well as others \* \* \* This is but an exercise of the police power, uniformly recognized as belonging to the states, and essential to the health, safety and comfort of its citizens; and it does not constitute a direct and material burden on interstate commerce. \* \* \* The amount of the charges and method of collection are primarily for determination by the state itself, and so long as they are reasonable, and are fixed according to some uniform, fair and practical standard, they constitute no burden on interstate commerce."

Plaintiffs have not successfully distinguished the Kane and Kendrick cases from the instant case, in so far as they relate to interstate commerce. The vehicles sought to be regulated by the Michigan statute are commercial vehicles carrying both passengers and freight. It may be well considered that their operations involved [fol. 50] a greater menace to public safety and are more destructive of the highways than are private automobiles operated for pleasure, and that they call for a greater degree of regulation and a higher compensation for the use of special facilities afforded.

The amount of the privilege tax for the use of the highways need not necessarily be limited, even to those engaged in interstate commerce, to the actual cost of such regulation, but may also, as appar-

ently is the case here, include reasonable compensation for the use of the highways and fair provision for anticipated repairs and improvements thereon. *Western Union Telegraph Company vs. New Hope*, 187 U. S. 419; *Atlantic and Pacific Telegraph Company vs. Philadelphia*, 190 U. S. 160; *Kane vs. New Jersey*, *Supra*.

It follows that such provisions of the act as are confined in their application to regulation of common carriers in connection with the public highways, are not a direct burden upon interstate commerce, even though they may incidentally affect interstate commerce, but any provisions which are not so confined constitute an attempt by the state to regulate, and therefore to unduly burden interstate commerce, and they are for that reason in contravention of the Federal Constitution, and void. Such provisions are those contained in Sections 3 and 7 of the Act. Section 3 has already been referred to. The provisions of Section 7 providing for insurance and for indemnity bonds for the protection of persons and property carried, are a direct burden upon interstate commerce, and are for that reason void. The provisions of both sections are separable from and independent of the remainder of the act, and so do not affect its validity. *Interstate Motor Transit Co., vs. Kuykendall*, 284 Fed. 882.

[fol. 51] 3. Section 9 of the Federal Highway Act of November 9th, 1921, (42 Stat. 212), provides "That all highways constructed or reconstructed under the provisions of this act shall be free from tolls of all kinds". This is not in our judgment intended to refer to license fees such as are here involved (it not being even claimed that such act had reference to the analagous fees imposed under general motor vehicle license laws, or to laws licensing drivers of such vehicles). *State vs. Vigneaux*, 130 La. 424; 58 So. 135. The most that can be said of it in this connection is that such a provision is merely a condition attached, as between the Federal government and the State, to the contribution of aid provided by Federal legislation, and cannot deprive the State of its power and duty as trustee of the public highways for the benefit of the people of the State, to enact reasonable regulations in the exercise of its police power over such highways.

4. The State may within its police power reasonably regulate the manner and extent of the use of its public highways by common carriers. Legislation of essentially the same character as that of Act 209 has been widely enacted and sustained by the courts against constitutional objections such as are here urged. *Nolen vs. Riechman*, 225 Fed. 812; *Lutz vs. New Orleans*, 235 Fed. 978, affirmed in 237 Fed. 1018 (C. C. A. 5). *Schoenfeld vs. Seattle*, 265 Fed. 726; *Hadfield vs. Lundin*, 98 Wash. 657, 168 Pac. 516; *West vs. Asbury Park*, 89 N. J. L. 402; 99 Atl. 190; *Jitney Bus Association vs. Wilkesbarre*, 256 Pa. 462; 100 Atl. 954; *West Suburban Company vs. Chicago and West Towns Railway Company*, 140 N. E. 56 (Ill.); *Western Association vs. Railroad Commission*, 173 Calif. 802; 162 Pac. 391; *New Orleans vs. LeBlanc*, 139 La. 113; 71 So. 248; *Huston vs. Des Moines*, 176 Iowa 455; 156 N. W. [fol. 52] 889; *Cummins vs. Jones*, 79 Ore. 276; 155 Pac. 171; *Dew-*

ser vs. Wichita, 96 Kan. 820; 153 Pac. 1194; Ex parte Sullivan, 77 Tex. Cr. Rep. 72; 178 S. W. 537; Memphis vs. Tennessee, 133 Tenn. 83; 179 S. W. 631; Ex parte Dickey, 76 W. Va. 576; 85 S. W. 781.

The statute is not class legislation because it applies only to common carriers operating over fixed routes. It is well known that commercial motor vehicle transportation and highway maintenance expense resulting therefrom, is rapidly increasing; that traffic on main highways is greatly congested. It is not an unreasonable classification under the police power to make a distinction between those common carriers whose use of the highways is more regular, and hence more frequent, and whose operation on the highways is attended with greater danger to life and property and greater damage to the highways, and those carriers whose use of the highways is only occasional and spasmodic. Such a distinction does not constitute an arbitrary discrimination, it being settled that every state of facts sufficient to sustain a classification which can be reasonably conceived of as having existed when the statutes was enacted will be assumed by the Court. *Crecent Cotton Oil Company vs. Miss.*, 257 U. S. 129; *Nolen vs. Reichman*, supra.

The latter case was decided by a special court convened under Section 266 of the Judicial Code, in the District Court for the Western District of Tennessee, Western Division, opinion rendered by Warrington, Circuit Judge, McCall and Sanford, District Judges. There was involved a statute seeking to regulate as common carriers "any public conveyance propelled by steam, gasoline, electricity, or other power, for the purpose of transportation similar to that ordinarily afforded by street railways, but not operated upon fixed tracks, by indiscriminately accepting and discharging passengers along the way and course of operation". The purpose of the statute [fol 53] was to regulate vehicles commonly known as "jitneys", and it was contended that the act set up an unreasonable classification and was violative of the fourteenth amendment to the Constitution of the United States. The court found that there is a substantial distinction between a street railway and a jitney, and between a jitney and a taxicab, saying, "While the services they all render are those of a common carrier, yet the services are so different in detail that it would be wholly impracticable to write a statute applicable to them all and serve at the same time the convenience and safety of the public". The distinction between a jitney and a taxicab is precisely the distinction which the plaintiff contends results in discriminatory classification in the instant case. The jitney operates upon a schedule over fixed routes and between fixed termini, while the operations of the taxicabs are more flexible and occasional. They are both common carriers, but the incidents of their operation differ and call for different kinds of regulation.

5. Section 3 of the act providing among other things that all laws of the state regulating common carriers shall apply also to common carriers by motor vehicle on the public highways of the State, would seem to be invalid for the additional reason that it is



too vague and uncertain to furnish a sufficiently definite standard of guilt. *Kinnane vs. Detroit Creamery Company*, 255 U. S. 102. Plaintiff's attack upon Act 209 for uncertainty and indefiniteness is directed wholly to Section 3, and we have already indicated the invalidity of this section under constitutional provisions elsewhere referred to.

The additional contention raised by the Bill of Complaint that the Act confers judicial and legislative powers on an executive tribunal is, in our opinion, without merit, the powers and duties with which the Public Utilities Commission is clothed by the statute [fol. 54] being such as are uniformly held to be properly vested in an administrative board of this kind. *Arver vs. United States*, 245 U. S. 366; *Mackin vs. Detroit Timkin Axle Co.*, 187 Mich. 19.

Equally untenable is the claim that the act is void because given immediate effect. Even if the legislature clearly abused (as has not been shown) its broad discretion in this respect (*People vs. Urcavitch*, 210 Mich. 431), the statute became effective at least at the expiration of the period prescribed by the Michigan Constitution for bills not entitled to immediate effect. *Attorney General vs. Lindsay*, 178 Mich. 524; *Simpson vs. Gage*, 195 Mich. 581.

We conclude that Act 209, except sections 3 and 7 thereof, is a valid exercise of the police power of the state, and that the regulatory provisions thereof for the use of the state highways are operative independent of sections 3 and 7. Until plaintiffs have offered to comply with those provisions of the act which are sustained they may not invoke the equitable arm of the Court as to those provisions of the act which are a direct burden upon interstate commerce.

The injunction prayed for in the Bill of Complaint is denied.

Maurice H. Donahue, Circuit Judge. Arthur J. Tuttle, Charles C. Simons, District Judges.

[File endorsement omitted.]

[fol. 55]

IN UNITED STATES DISTRICT COURT

[Title omitted]

RESTRAINING ORDER—Filed Jan. 15, 1924

This cause came on to be heard upon the order to show cause why an interlocutory injunction should not issue and after reading the bill of complaint and the annexed affidavits and the answers thereto, and Percy J. Donovan of Beaumont, Smith and Harris, being heard on the motion and O. L. Smith, Esquire, Assistant Attorney General of the State of Michigan, and Hinton E. Spalding, [fol. 56] Esquire, being heard in opposition for the defendants, the latter for the Intervening defendants the Detroit, Monroe and Toledo Short Line Railway, and briefs having been submitted by each of aforesaid counsel and by George E. Brand, Amicus Curiae

for plaintiff, and the Court being fully advised in the premises, and having heretofore rendered its opinion granting the interlocutory injunction as prayed for by the plaintiff, Duke Cartage Company, it is this day

Ordered that Michigan Public Utilities Commission, Ralph Duff, William W. Potter, Sherman T. Handy, Samuel O'Dell, and Samuel Dewitt Pepper, members of said Michigan Public Utilities Commission, and Andrew B. Dougherty, Attorney General of the State of Michigan, Paul W. Voorhies, Prosecuting Attorney of Wayne County, Michigan, and Clayton C. Golden, Prosecuting Attorney of Monroe County, Michigan; Roy L. Vandercook, Commanding Officer of the Michigan State Police, and Otto R. Gearhart, a member of the Michigan State Police, and their certain associates, successors, assigns, officers, managers, servants, clerks, agents and workmen, and each of them be and they are hereby enjoined from enforcing or attempting to enforce against Coral W. Duke, doing business as the Duke Cartage Company or any of his trucks, employees or equipment, Act No. 209 of the Public Acts of 1923 of the State of Michigan and from enforcing against him or his servants, employees or equipment, any of the exactions of penalties or fees in said act provided—and from in any manner molesting or interfering with said plaintiff Coral W. Duke, doing business as the Duke Cartage Company, or his equipment or any person employed by him in the prosecution thereof, until further order of this Court.

Charles C. Simons, District Judge.

[File endorsement omitted.]

[fol. 57]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Jan. 15, 1924

Now come the defendants in the above entitled cause and file the following assignment of errors, upon which they will rely upon the prosecution of the appeal in the above entitled cause from the order made by this Honorable Court on the 15th day of January, 1924, granting an interlocutory injunction.

1

That the United States District Court for the Eastern District of Michigan, Southern Division thereof, and the Hon. Maurice H. Donahue, Circuit Judge, and the Hon. Arthur J. Tuttle and Charles C. Simons, District Judges, who heard the application for interlocutory injunction and made the said order granting such injunction, erred in granting said injunction.



[fol. 58]

11

That said District Court and said Judges erred in holding that Act No. 209 of the Public Act of Michigan of 1923 does not apply to the plaintiff in this cause and that the business of said plaintiff is not subject to regulation under and in accordance with the provisions of said Act.

## III

That said District Court and said Judges erred in holding that Section three of said Act No. 209 of the Public Acts of Michigan of 1923 is invalid and unconstitutional because in violation of the constitution of the State of Michigan.

## IV

That said District Court and said Judges erred in holding that Section three of said Act No. 209 of the Public Acts of Michigan of 1923 is invalid and unconstitutional because in violation of the Federal Constitution, and because it is a direct burden upon Interstate Commerce.

## V

That said District Court and said Judges erred in holding that Section seven of said Act No. 209 of the Public Acts of Michigan of 1923 is invalid and in violation of the Federal Constitution because its provisions are a direct burden upon Interstate Commerce.

Andrew B. Dougherty, in pro. per.; O. L. Smith, Asst. Atty. Genl., Attorneys for Appellants other than the Detroit, Monroe & Toledo Short Line Railway. Stevenson, Carpenter, Butzel & Backus, Attorneys for Appellants the Detroit, Monroe & Toledo Short Line Railway.

[File endorsement omitted.]

[fol. 59]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR AND ORDER ALLOWING APPEAL—Filed Jan. 15, 1923

To the Honorable Arthur J. Tuttle and Charles C. Simons, District Judges:

The above named defendants feeling ag-grieved by the order made and entered in the above entitled cause on the 15th day of January, 1924, granting an interlocutory injunction restraining and preventing the enforcement against the Plaintiff of Act No. 209 of the Public Acts of Michigan of 1923, as prayed in the bill of complaint,

does hereby appeal from said order to the Supreme Court of the United States for the reasons set forth in the assignment of error filed herewith, and defendants pray that appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said order was based, duly authenticated, be sent to the Supreme Court of the United [fol. 60] States sitting at Washington under the rules of such Court in such cases made and provided.

And your petitioners further pray that the proper order relating to the required security to be required of them be made.

Michigan Public Utilities Commission, Ralph Duff, William W. Potter, Sherman T. Handy, Samuel O'Dell, members of said Michigan Public Utilities Commission, and Andrew B. Dougherty, Attorney General of the State of Michigan; Paul W. Voorheis, Prosecuting Attorney of Wayne County, and Clayton C. Golden, Prosecuting Attorney of Monroe County, Michigan; Roy L. Vandercook, Commanding Officer of the Michigan State Police, and Otto R. Gearhart, a member of the Michigan State Police, by William W. Potter, Chairman. Detroit, Monroe & Toledo Short Line Railway, by Stevenson, Carpenter, Butzel & Backus, Its Attorneys.

Appeal allowed without giving bond, bond having been waived.  
Charles C. Simons, District Judge.

Giving of bond on appeal is hereby waived Jan. 15, 1924.  
Beaumont, Smith & Harris, Attys. for Appellees.

[File endorsement omitted.]

---

[fol. 61] SUPREME COURT OF THE UNITED STATES, WASHINGTON,  
D. C.

CITATION—In usual form showing service on Beaumont, Smith & Harris; omitted in printing

---

[fol. 62] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE TRANSCRIPT OF RECORD—Filed Jan. 24, 1924

It is hereby stipulated and agreed by the parties to the above entitled cause by their respective attorneys that the transcript of the record on the appeal of said cause from the order granting an inter-

locutory injunction therein, to the Supreme Court of the United States shall consist of the following portions of the record:

- (1) Bill of Complaint and affidavit attached.
- (2) The answers of the defendants with the order permitting the Detroit, Monroe and Toledo Short Line Railway to intervene as defendant, and answer.
- (3) The Opinion of the Court on the argument of the application for interlocutory injunction, and the Opinion of the Court on the application for interlocutory injunction in the cause of Liberty Highway Company, et al., vs. Michigan Public Utilities Commission, et al., which was argued at the same time, and which is appended because of the discussion therein of questions raised in the Duke Case, and the reference thereto in the Opinion in the Duke Case.
- (4) The Order for Interlocutory Injunction.
- (5) Petition for Appeal, assignments of error and order allowing appeal and waiver of appeal bond.
- (6) Citation on appeal and Clerk's Certificate.

Beaumont, Smith & Harris, Attorneys for Plaintiff. Andrew B. Dougherty, Attorneys for Defendants except the Detroit, Monroe & Toledo Short Line Railway. Stevenson, Carpenter, Butzel & Backus, Attorneys for Defendant the Detroit, Monroe and Toledo Short Line Railway.

[File endorsement omitted.]

---

[fol. 63]                      IN UNITED STATES DISTRICT COURT

[Title omitted]

#### CLERK'S CERTIFICATE

I, Elmer W. Voorheis, Clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify and return to claim of appeal, of Michigan Public Utilities Commission, et al., Defendants in the above entitled cause, that it is a true and correct copy of all the records and proceedings in said cause designated by counsel for respective parties, to be included in Clerk's return to said writ of error, as appear of record and on file in my office; that I have compared the same with the originals so designated and that it is a true and correct transcript therefrom and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the official seal of said Court, at Detroit, in said District, this ninth

day of February, in the year of our Lord, one thousand nine hundred and twenty four, and of the Independence of the United States of America, the one hundred and forty eighth.

Elmer W. Voorheis, Clerk United States District Court, Eastern District of Michigan. (Seal of the U. S. District Court, Eastern District of Mich.)

Endorsed on cover: File No. 30,115. E. Michigan D. C. U. S. Term No. 283. The Michigan Public Utilities Commission, Ralph Duff, William W. Potter, et al., etc., et al., appellants, vs. Coral W. Duke, doing business as Duke Cartage Company. Filed February 11, 1924. File No. 30,115.

(3460)